

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.852 OF 2003

Shailesh Akanath Mahatre : Petitioner

V/s.

The State of Maharashtra & Ors. : Respondents

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Mr.G.N.Salunke for Mr.A.A. Pol for the petitioner.

Mr.A.H.Palekar, Asstt. Govt. Pleader for the respondent
nos.1 to 3.

Mr.K.K.Jadhav for the respondent nos.4 and 5.

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CORAM : S.A. BOBDE, J.

July 20, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Palekar, learned Asstt. Govt. Pleader for the
respondent nos.1 to 3 and Mr.Jadhav for the respondent
nos.4 and 5, appear and waive service of rule.

Heard by consent.

2. The petitioner is aggrieved by the rejection of his
application for a fair-price shop. The petitioner's
application was initially rejected by the Controller. The
Controller concluded that the respondent no.4 Mrs.Darshana

Mahatre and the petitioner belong to priority no.1 and that since Mrs.Darshana Mahatre is a lady, priority is being given to her. It appears that before arriving at this conclusion, the Controller took note of the fact that the petitioner has filed a photocopy of the affidavit that he has been granted the premises on a permanent basis, but however he has not submitted a tax receipt regarding the said funds which is signed by the appropriate authority. Along with the petitioner, the case of the respondent no.5 was also rejected. The respondent no.5 and the petitioner carried the matter in revision before the Minister, Food and Civil Supplies. The learned Minister has rejected the revision in regard to the petitioner only but has allowed the revision in regard to the respondent no.5. The rejection of the petitioner's application is on the ground that there is no cogent and reliable evidence regarding the fact that the petitioner is in possession of the premises and, therefore, the petitioner's case is liable to be rejected.

3. Mr.Salunke, the learned counsel for the petitioner, relied on the advertisement which is at exh.'I' to the petition in which one of the conditions regarding the place where the proposed shop is to be opened reads as follows:-

"2. It is not binding that proposed place must be a commercial place. The fair price shop may also be allowed in residential premises. But the same must be a pucca structure and on the day of application it should be in lawful possession of the applicant further for such residential place the no objection to start such shop should be produced from concerned Housing Society or the authority."

4. It is clear that the advertisement requires the applicant to be in possession of the premises where he proposes to run the fair-price shop. From the record, it is clear that even before the Controller, the petitioner had filed a photocopy of the affidavit that the premises have been allotted to him on a permanent basis. The revisional authority has interfered on the ground that there is no reliable evidence. There is no discussion whatsoever as to why the affidavit submitted by the petitioner is not relied upon. Mr. Palekar, the learned Asstt. Govt. Pleader contended that the petitioner again submitted a photocopy of the affidavit. Indeed, if the authority wanted to peruse the original, it could have

called upon the petitioner to produce the same. The learned counsel for the petitioner states that the petitioner, if given an opportunity, would produce the original before the authority.

5. In the circumstances, the impugned order is set aside. The matter is remanded back to the revisional authority for a fresh consideration, in accordance with law. In the meanwhile, the business of the respondent nos.4 and 5 shall not be disturbed, pending decision on the revision. Revisional authority may decide within a period of eight weeks from the date the parties appear before it. The parties are directed to appear before the authority on 8.8.2005.

6. The rule is made absolute in the aforesaid terms.

Sd/-

S.A. BOBDE, J.